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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 635

[Docket No. 130214139-3542-02]

RIN 0648-XD027

Atlantic Highly Migratory Species; Atlantic Bluefin Tuna Fisheries

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Temporary rule; inseason General category retention limit adjustment.

SUMMARY: NMFS is adjusting the Atlantic bluefin tuna (BFT) General category daily retention limit from the default limit of one large medium or giant BFT to two large medium or giant BFT for the January 2014 subquota period ((i.e., from January 1 through March 31, 2014, or until the available subquota for the period is reached, whichever comes first). This action is based on consideration of the regulatory determination criteria regarding inseason adjustments, and applies to Atlantic tunas General category (commercial) permitted vessels and Highly Migratory Species (HMS) Charter/Headboat category permitted vessels when fishing commercially for BFT.

DATES: Effective January 1, 2014, through March 31, 2014.

FOR FURTHER INFORMATION CONTACT: Sarah McLaughlin or Brad McHale, 978-281-9260.

SUPPLEMENTARY INFORMATION: Regulations implemented under the authority of the Atlantic Tunas Convention Act (ATCA; 16 U.S.C. 971 *et seq.*) and the Magnuson-Stevens

Fishery Conservation and Management Act (Magnuson-Stevens Act; 16 U.S.C. 1801 et seq.) governing the harvest of BFT by persons and vessels subject to U.S. jurisdiction are found at 50 CFR part 635. Section 635.27 subdivides the U.S. BFT quota recommended by the International Commission for the Conservation of Atlantic Tunas (ICCAT) among the various domestic fishing categories, per the allocations established in the 2006 Consolidated Highly Migratory Species Fishery Management Plan (2006 Consolidated HMS FMP) (71 FR 58058, October 2, 2006) and in accordance with implementing regulations. NMFS is required under ATCA and the Magnuson-Stevens Act to provide U.S. fishing vessels with a reasonable opportunity to harvest the ICCAT-recommended quota.

The 2010 ICCAT recommendation regarding western BFT management resulted in baseline U.S. quotas for 2011 and for 2012 of 923.7 mt (not including the 25 mt ICCAT allocated to the United States to account for bycatch of BFT in pelagic longline fisheries in the Northeast Distant Gear Restricted Area). Among other things, the 2011 BFT quota rule (76 FR 39019, July 5, 2011) implemented the base quota of 435.1 mt for the General category fishery (a commercial tunas fishery in which handgear is used). Each of the General category time periods (January, June through August, September, October through November, and December) is allocated a portion of the annual General category quota. As published in the final 2013 BFT quota specifications (78 FR 36685, June 19, 2013), the baseline General category subquotas as codified have not been modified, and include 23.1 mt for the January subquota period. The 2013 ICCAT recommendation regarding western BFT management does not result in changes to the baseline U.S. quota or subquotas for 2014.

Unless changed, the General category daily retention limit starting on January 1 would be the default retention limit of one large medium or giant BFT (measuring 73 inches (185 cm)

curved fork length (CFL) or greater) per vessel per day/trip (§ 635.23(a)(2)). This default retention limit would apply to General category permitted vessels and to HMS Charter/Headboat category permitted vessels when fishing commercially for BFT.

For the January 2013 subquota period, NMFS adjusted the General category limit from the default level of one large medium or giant BFT to two large medium or giant BFT (77 FR 74612, December 17, 2012). That retention limit was effective from January 1, 2013, until February 15, 2013, when NMFS closed the fishery because the January subquota had been met (78 FR 11788, February 20, 2013). For the June through December 2013 periods, NMFS adjusted the limit to three large medium or giant BFT (78 FR 26709, May 8, 2013, and 78 FR 50346, August 19, 2013), and subsequently adjusted the limit to five large medium or giant BFT for November 27 through December 31, 2013 (78 FR 72584, December 3, 2013).

Adjustment of General Category Daily Retention Limit

Under § 635.23(a)(4), NMFS may increase or decrease the daily retention limit of large medium and giant BFT over a range of zero to a maximum of five per vessel based on consideration of the relevant criteria provided under § 635.27(a)(8), which include: the usefulness of information obtained from catches in the particular category for biological sampling and monitoring of the status of the stock; effects of the adjustment on BFT rebuilding and overfishing; effects of the adjustment on accomplishing the objectives of the fishery management plan; variations in seasonal BFT distribution, abundance, or migration patterns; effects of catch rates in one area precluding vessels in another area from having a reasonable opportunity to harvest a portion of the category's quota; and review of dealer reports, daily landing trends, and the availability of BFT on the fishing grounds.

NMFS has considered these criteria and their applicability to the General category BFT

retention limit for the January 2014 subquota period. These considerations include, but are not limited to, the following:

Biological samples collected from BFT landed by General category fishermen and provided by BFT dealers continue to provide NMFS with valuable data for ongoing scientific studies of BFT age and growth, migration, and reproductive status. This action would be taken consistent with the quotas previously implemented and analyzed in the 2011 BFT quota final rule (76 FR 39019, July 5, 2011), consistent with the objectives of the 2006 Consolidated HMS FMP. This action will not have impacts beyond those already analyzed and thus is not expected to negatively impact the stock. A principal consideration is the objective of providing opportunities to harvest the full General category quota without exceeding it based upon the 2006 Consolidated HMS FMP goal: “Consistent with other objectives of this FMP, to manage Atlantic HMS fisheries for continuing optimum yield so as to provide the greatest overall benefit to the Nation, particularly with respect to food production, providing recreational opportunities, preserving traditional fisheries, and taking into account the protection of marine ecosystems.” For the last two years, the available January subquota was reached on February 15, 2013, and January 22, 2012. However, in other recent years, there has been an underharvest of the January subquota. Under the two-fish limit that applied during January 2011 and January 2010 (when fishing on the January subquota was authorized for January 1 through 31), January landings were 34 percent of the baseline subquota (7.9 mt out of 23.1 mt) and 11 percent (2.7 mt out of 23.8 mt), respectively. Thus, the default one-fish limit likely would be overly restrictive and would not support the objective of providing opportunities to harvest the full January subquota without exceeding it. Based upon the ICCAT recommended quota, the baseline 2013 General category January subquota is 23.1 mt. Although NMFS has the authority to set the daily retention limit to

up to five fish, under a higher limit (and higher fish availability), the rate of harvest of the January subquota could be accelerated and result in a relatively short fishing season. A short fishing season may preclude or reduce fishing opportunities for some individuals or geographic areas. Therefore, in order to maintain an equitable distribution of fishing opportunities, a retention limit closer to the low end of the allowable range of retention limits (i.e., two fish) is warranted. A potential ancillary benefit of a subquota period that is open for an extended duration is that any scientific information (including biological samples) collected from BFT may be from fish collected over a broader temporal and geographic range than currently sampled. Lastly, fishery participants have supported this retention limit in prior seasons.

Therefore, based on these considerations, NMFS has determined that a two-fish General category retention limit is warranted for the January subquota. It would provide a reasonable opportunity to harvest the U.S. quota of BFT without exceeding it, while maintaining an equitable distribution of fishing opportunities, help achieve optimum yield in the General category BFT fishery, allow collection of a broad range of data for stock monitoring purposes, and be consistent with the objectives of the Consolidated HMS FMP. Therefore, NMFS increases the General category retention limit from the default limit (one) to two large medium or giant BFT per vessel per day/trip, effective January 1, 2014, through March 31, 2014, or until the 23.1-mt January subquota is harvested, whichever comes first.

Regardless of the duration of a fishing trip, the daily retention limit applies upon landing. For example (and specific to the retention limit for the January 2014 subquota period), whether a vessel fishing under the General category limit takes a two-day trip or makes two trips in one day, the daily limit of two fish may not be exceeded upon landing. This General category retention limit is effective in all areas, except for the Gulf of Mexico, and applies to those vessels

permitted in the General category, as well as to those HMS Charter/Headboat permitted vessels fishing commercially for BFT.

Monitoring and Reporting

NMFS will continue to monitor the BFT fishery closely through the mandatory dealer landing reports, which NMFS requires to be submitted within 24 hours of a dealer receiving BFT. Depending on the level of fishing effort and catch rates of BFT, NMFS may determine that additional retention limit adjustment or closure is necessary to ensure available quota is not exceeded or to enhance scientific data collection from, and fishing opportunities in, all geographic areas.

Closures or subsequent adjustments to the daily retention limits, if any, will be published in the Federal Register. In addition, fishermen may call the Atlantic Tunas Information Line at (888) 872-8862 or (978) 281-9260, or access hmspermits.noaa.gov, for updates on quota monitoring and retention limit adjustments.

Classification

The Assistant Administrator for NMFS (AA) finds that it is impracticable and contrary to the public interest to provide prior notice of, and an opportunity for public comment on, this action for the following reasons:

The regulations implementing the 2006 Consolidated HMS FMP provide for inseason retention limit adjustments to respond to the unpredictable nature of BFT availability on the fishing grounds, the migratory nature of the species, and the regional variations in the BFT fishery. Affording prior notice and opportunity for public comment to adjust the retention limit for the portion of the General category season that begins January 1, 2014, is impracticable as NMFS needs to wait until it has necessary data and information about the fishery before it can

select the appropriate retention limit for a time period prescribed by regulation. By the time NMFS has the necessary data, implementing the retention limit following a public comment period would preclude fishermen from harvesting BFT that are legally available consistent with all of the regulatory criteria. Analysis of available data shows that the General category BFT retention limits may be increased with minimal risks of exceeding the ICCAT-allocated quota.

Delays in increasing these retention limits would adversely affect those General and Charter/Headboat category vessels that would otherwise have an opportunity to harvest more than the default retention limit of one BFT per day/trip and may exacerbate the problem of low catch rates and of quota rolling from one time period to the next. Limited opportunities to harvest the respective quotas may have negative social and economic impacts for U.S. fishermen that depend upon catching the available quota within the time periods designated in the 2006 Consolidated HMS FMP. Adjustment of the retention limit needs to be effective January 1, 2014, or as soon as possible thereafter, to minimize any unnecessary disruption in fishing patterns, to allow the impacted sectors to benefit from the adjustment, and to not preclude fishing opportunities for fishermen in geographic areas with access to the fishery only during this time period (due to the seasonality of BFT distribution). Therefore, the AA finds good cause under 5 U.S.C. 553(b)(B) to waive prior notice and the opportunity for public comment. For these reasons, there is good cause under 5 U.S.C. 553(d) to waive the 30-day delay in effectiveness.

This action is being taken under § 635.23(a)(4) and is exempt from review under Executive Order 12866.

Authority: 16 U.S.C. 971 et seq. and 1801 et seq.

Dated: December 17, 2013.

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National Marine Fisheries Service.

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